

January 3, 2005

**OFSC Position Paper re: Quebec Court Ruling on  
Snowmobile Trail in Provincial Park**

**Preamble**

Please note that the position stated herein is based on the current information available to the OFSC as of this date. The OFSC reserves the right to revise or restate this position as warranted by any new developments or future clarifications that may occur (Please destroy any previous position paper on this subject dated prior to December 20, 2004).

**The Situation**

On December 1, a Quebec Superior Court judge ruled in a class action suit brought against the Government of Quebec and several municipalities (MRCs). The suit was filed by area residents with homes located along side an abandoned rail line, now a *linear provincial park* owned by the Province of Quebec and known as Le P'tite-train-du-Nord.

The judge awarded residents within 100 metres of the trail financial compensation for damages related to the "disruption" of their lives by snowmobile traffic through the park. The judge also ordered a 38 km. section of this trail closed to avoid further disruption.

National media picked up on this story. Out of context, they reported the damages, the trail closure, and the statement about a trail within 100 metres of a dwelling. Many people receiving the media reports mistakenly assume that this ruling universally could apply to snowmobile trails anywhere in Canada.

On Friday, December 17, the Government of Quebec approved new legislation that places an 18-month moratorium on any new legal action based on disturbance, noise and odour complaints linked to the use of off-road vehicles, including snowmobiles. The new law does not apply to Le P'tite-train-du-Nord or change that recent court ruling. An appeal on this case may still be forthcoming. During the newly established 18-month cooling-off period, the Province will work with the FCMQ and other stakeholders to assess locations where trails go through residential zones.

The new legislation approved by the Government of Quebec provides FCMQ snowmobile trails with short-term protection from the threat of additional lawsuits. It also means that the province, and municipalities with snowmobile trails on their land, will be much less likely to close other trails to avoid the immediate risk of new liability posed by the court ruling.

The new legislation also enacted new speed and hours of operation limits for snowmobiling on rail-trails on provincial land. Where these trails go through a residential zone, the speed limit has been reduced from 70 kmph to 30 kmph. Similarly, snowmobile operation on these trails will no longer be allowed between 10 PM and 6 AM. By providing some certainty for public landowners, some respite for residents, and a cooling-off period for everyone, the new law means that most FCMQ trails will be open this winter.

Meanwhile, the Government of Quebec and the MRCs recently decided to appeal the both the original court decision and the assessed damages.

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### **OFSC Position**

The OFSC is concerned that the court ruling may be misinterpreted and misused. The OFSC wishes to reassure municipalities, trail groups, the Province of Ontario and other stakeholders about the outcome of this case, as we know it.

The Quebec case is very site specific. It explicitly deals with a set of special circumstances that occurred within one particular Quebec provincial park. Thus, the damage award, trail closure and 100-metre prohibition should apply only to the site in question, within this provincial park, or perhaps, to other Quebec parks with similar circumstances (if any).

However, Le P'tite-train-du-Nord is a unique setting for a provincial park. Many dwellings are located within feet of the actual rail bed. How and when they came to be this close to what is now a snowmobile trail is unknown to the OFSC, but it is likely that at least some of them were present when trains were active on the line. On the other hand, most active (or inactive) rail lines in Ontario have a wide right of way on either side of the rail bed to act as safety zone and buffer. Dwellings are not usually built in this space. Such a buffer is not present at this particular site in this Quebec park.

This is not to say that there are not dwellings close to rail-trails in Ontario, especially where they may go through a community. However, it is unlikely that all of the special circumstances upon which this ruling is based would be present.

Moreover, to our knowledge permanent residences are not allowed in most Ontario provincial parks (unlike hunt camps or cottages), so the OFSC has not been able to identify any similar rail-trail/residence juxtapositions associated with a provincial park here. It is also noteworthy that most OFSC trails are not presently located in provincial parks; any that are, are unlikely to be located in proximity to permanent residences for the reasons previously stated.

The Quebec ruling may also not be relevant to OFSC trails located anywhere on any public land that is not a provincial park. It certainly should not be applicable to the 60% of OFSC trails on private land.

It is also important to understand that the Quebec ruling is made under their civil law, which is very different from Ontario's English Common Law. This means that a ruling made in Quebec may not be used as precedent in Ontario. Therefore, there is additional doubt as to the ruling's universal applicability outside of Quebec or to any snowmobile trails in our provincial parks, much less to OFSC trails elsewhere in Ontario.

The OFSC also cautions against unnecessary, excessive or redundant legislation, when existing laws are appropriate if properly enforced. Snowmobiles are legally recognized and regulated vehicles in Ontario. Their sound level is also limited by law, but some irresponsible riders illegally modify their sleds with noisy mufflers (just as some car owners do). With an anti-piping law on our books, it is incumbent on police agencies to enforce existing law to prevent annoyance to others. The OFSC respects the rights of adjoining landowners and is committed to the abatement of unnecessary and unwanted noise on our trails by encouraging law enforcement agencies to enforce current snowmobile exhaust legislation.

### **The New Legislation**

The OFSC is pleased that the Province of Quebec moved quickly to protect snowmobile trails. This action recognizes how important snowmobiling is to both the provincial and local economies, and established that this importance is a “greater good” than any isolated instance of disruption that may occur. This action sends a clear message against the court ruling and prevents anyone from trying to use it elsewhere in Quebec. It emphasizes that the court ruling is a Quebec-specific case that is being handled with Quebec-specific solutions. As such, this development should discourage others from trying to use the court ruling to their own benefit outside of Quebec, at least during the next 18 months.

However, the new legislation leaves many questions unanswered. What happens after the 18-month moratorium? Will the protection be extended? How will trails through residential zones be handled? The new legislation does not appear to provide funding for signs or other communications to notify snowmobilers of the new law. It does not appear to provide additional resources or mandate for its enforcement by existing authorities. It appears to rely heavily on a group of FCMQ volunteers (Trail Patrol to us) to get the word out and convince snowmobilers to obey the law. Given that the absence of each of these elements was at least in part responsible for causing the original court case, what reason is there to think that the situation will improve much in the next two years?

The new legislation sets new speed limits and hour restrictions in “residential zones”. It is unclear what the definition of a residential zone is. Although only applicable to trails on provincial land, the new law opens the door for Quebec municipalities to pass new by laws with the same restrictions, and if enough of them do so, snowmobiling in Quebec could be fundamentally changed.

The snowmobiling community will be closely watching developments in Quebec for the next 18-months. So will other jurisdictions and our opponents. We can be certain that our opponents will also be doing everything possible to influence the outcome against snowmobiling. In Ontario, OFSC clubs must be more vigilant than ever about sensitive situations and community relations. We can be thankful that our long running environment program has already helped establish us as good and caring stewards, and continuing to be environmentally-friendly will be more important than ever for the foreseeable future.

As to the new restrictions on Quebec snowmobiling, the OFSC position is to remind everyone that the speed limit in Ontario is 50 kmph, considerably lowering that the 70 kmph that remains legal everywhere in Quebec except where recently restricted. The verdict is out on whether the new Quebec speed restrictions will work. Again, the OFSC cautions against unnecessary, excessive or redundant legislation, where existing laws, such as those in Ontario, are appropriate if properly enforced. That’s why the OFSC is continually encouraging an increased enforcement presence on our trails.

The new snowmobile curfew is an unknown factor, but Quebec is a good test for the idea. The OFSC will closely monitor its application and effectiveness for the next two years before making any recommendation.

### **The Appeal**

The OFSC welcomes the decision by the Government of Quebec and the MRCs to appeal the court ruling and damages. The appeal should effectively place the original ruling in limbo pending a final outcome of the appeal. In turn, this means that the original ruling is unlikely to be used as the basis for any similar claim until a final determination is reached. So the best answer to anyone who refers to the original ruling as a potential challenge to organized snowmobiling or to a specific trail, is simply to say that, since it is under appeal, the ruling is not applicable elsewhere.

### **Snowmobiles and the Environment**

Technological improvements have reduced both the sound and emission output of today's sleds. Late model snowmobiles are now considerably quieter than their predecessors, such that it would take 258 modern sleds operating to produce the same sound level as one sled from thirty years ago. The new 4-stroke engines are even quieter.

Today's 4-stroke and 2-stroke SDI sleds produce 50% to 75% fewer emissions and burn less fuel and oil too. Like contemporary automobiles, which are substantially cleaner than older models, modern snowmobiles use similar on-board computers, electronic fuel injection and other technology to achieve comparable results.

The myth of noisy and polluting snowmobiles is a misconception that is not supported by the latest scientific data or research. That is why a threatened ban on snowmobiles in American national parks like Yellowstone was recently overthrown. A U.S. Court ruled against the proposed ban on the grounds that it was based on out of date reports and junk science that was not relevant to today's snowmobiling and the environment.

### **Conclusions**

- The 43,000 km. OFSC trail system is largely complete and very few "new" trails are being created.
- OFSC snowmobile clubs continue to work with landowners, ministries, communities and residents to deliver the benefits of snowmobiling to as many people as possible.
- The OFSC has strived successfully for 38 years to ensure that a situation similar to that in Quebec has not and may not occur in Ontario.
- Ontario does not close roads because of illegally loud vehicles, nor should we close trails because of a few illegally loud sleds.
- Ontario needs to place more emphasis on enforcing existing laws pertaining to snowmobiles.
- Municipalities, trail groups, the Province of Ontario and other stakeholders can continue to be confident in the future of OFSC snowmobiling.
- The OFSC and its clubs must continue to emphasize both the economic importance of and the environmental responsible nature of organized snowmobiling.